CLERK'S COPY.

115

61236

S. C.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919. 20

No. ~~295~~. 324

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR.

vs.

L. COHEN GROCERY COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED MAY 6, 1920.

(27661)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 906.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

L. COHEN GROCERY COMPANY.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

INDEX.

	Original.	Print.
Citation and service	1	1
Writ of error and return	2	1
Caption	3	2
Indictment	4	3
Demurrer to indictment	8	5
Order submitting demurrer	10	6
Memorandum opinion	11	6
Order sustaining demurrer	22	12
Petition for writ of error	23	13
Assignment of error	25	14
Order allowing writ of error	27	15
Election as to transcript, etc.	28	15
Clerk's certificate	30	16

1 THE UNITED STATES OF AMERICA:

To L. Cohen Grocery Company, a corporation, defendant, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein United States of America is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Charles B. Faris, judge of the district courts of the United States within and for the eastern district of Missouri, this 8th day of April, in the year of our Lord one thousand nine hundred and twenty.

C. B. FARIS,
United States District Judge for the Eastern District of Missouri.

1½ (Endorsed:) No. 7283. United States District Court. Eastern Division of the Eastern Judicial District of Missouri. United States of America, plaintiff, vs. L. Cohen Grocery Company, defendant. Citation. Filed Apr. 8, 1920. W. W. Nall, clerk.

We, the undersigned attorneys of record for defendant L. Cohen Grocery Company, a corporation, do hereby waive the issuance and service upon the L. Cohen Grocery Company, or upon us as its attorneys, of citation on appeal, and accept service of the same and enter the appearance of defendant herein.

Witness our hand this 8th day of April, A. D. 1920.

CHESTER H. KRUSE,
LOUIS B. SHEA,
Attorneys for L. Cohen Grocery Company, Defendant.

2 UNITED STATES OF AMERICA, ss:

The President of the United States, to the honorable judges of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America, plaintiff, versus L. Cohen Grocery Company, a corporation, defendant, a manifest error hath happened, to the great damage of the said United States of America as by its complaint appears. We being

willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 8th day of April, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.]

W. W. NAIL,
Clerk of the District Court of the United States for the Eastern District of Missouri.

21 RETURN TO WRIT.

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

In obedience to the command of the within writ, I hereby transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In witness whereof, I have hereto subscribed my name, and affixed the seal of said District Court, at office in the city of Saint Louis, Missouri, this thirteenth day of April, A. D. 1920.

[SEAL.]

W. W. NAIL,
Clerk of said Court.

3 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

In the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri.

Be it remembered, that heretofore, to wit: On the 27th day of February, A. D. 1920, there was returned into court by the grand jury of the United States of America inquiring in and for the Eastern Division of the Eastern Judicial District of Missouri, a certain indictment against the L. Cohen Grocery Company, which said indictment was duly filed, numbered 7283, and is in words and figures as follows, to wit:

4

(Indictment.)

UNITED STATES OF AMERICA,

Eastern Division of the Eastern Judicial District of Missouri, ss:

In the District Court of the United States, within and for the Eastern Division of the Eastern Judicial District of Missouri, at the September term thereof, A. D. 1919.

The grand jurors for the United States of America, duly empaneled, sworn and charged in and for the District Court of the United States, for the Eastern Division of the Eastern Judicial District of Missouri, at the September term thereof, A. D. 1919, and inquiring in and for said division of said district, upon their oaths present and charge:

That on or about the 3d day of December, A. D. 1919, and at all times herein mentioned, while a state of war existed between the United States of America and the German Government, the L. Cohen Grocery Company was a corporation duly organized and existing under the laws of the State of Missouri, with its main office and principal place of business located at or in the immediate vicinity of 1014 North Seventh Street, in the city of St. Louis and State of Missouri; that the said L. Cohen Grocery Company then, and at all times herein mentioned, was a dealer in sugar and other necessaries, and on or about said 3d day of December, A. D. 1919, at said city of St. Louis, in the State of Missouri, and within the division and district aforesaid, and within the jurisdiction of the court aforesaid, did wilfully and feloniously make an unjust and unreasonable rate and charge in handling and dealing in a certain necessary, to wit, sugar, in this, to wit:

That it, the said L. Cohen Grocery Company, not then and there being a farmer, gardener, horticulturist, vineyardist,
5 planter, ranchman, dairyman, stockman, or other agriculturist engaged in dealing in farm products produced or raised upon any land owned, leased, or cultivated by it, on or about the said 3d day of December, A. D. 1919, at the city of St. Louis, in the State of Missouri, and within the division and district aforesaid, and within the jurisdiction of the court aforesaid, being engaged as a dealer in the necessary as aforesaid, did wilfully and feloniously demand of, and exact and collect from and of one B. Heligman, whose given name is to the grand jurors unknown and can not, therefore, be herein set out, the sum of ten dollars and seven cents ($10.07), as and for the purchase price of about fifty (50) pounds of granulated sugar then and there purchased by the said B. Heligman from the said L. Cohen Grocery Company, which said purchase price so demanded, exacted, and collected for the said granulated sugar by the said L. Cohen Grocery Company from the said B. Heligman was and constituted an unjust and unreasonable rate and charge as it, the said L. Cohen Grocery Company, then and there well knew.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Second count.

And the grand jurors aforesaid, on their oaths aforesaid, do further present and charge:

That on or about the 8th day of December, A. D. 1919, and at all times herein mentioned, while a state of war existed between the United States of America and the German Government, the L. Cohen Grocery Company was a corporation duly organized and existing under the laws of the State of Missouri, with its main office
6 and principal place of business located at or in the immediate vicinity of 1011 North Seventh Street, in the city of St. Louis and State of Missouri; that the said L. Cohen Grocery Company then, and at all times herein mentioned, was a dealer in sugar and other necessaries, and on or about said 8th day of December, A. D. 1919, at said city of St. Louis, in the State of Missouri, and within the division and district aforesaid, and within the jurisdiction of the court aforesaid, did wilfully and feloniously make an unjust and unreasonable rate and charge in handling and dealing in a certain necessary, to wit, sugar, in this, to wit:

That it, the said L. Cohen Grocery Company, not then and there being a farmer, gardener, horticulturist, vine yardist, planter, ranchman, dairyman, stockman, or other agriculturist engaged in dealing in farm products produced or raised upon any land owned, leased, or cultivated by it, on or about the said 8th day of December, A. D. 1919, at the city of St. Louis, in the State of Missouri, and within the division and district aforesaid, and within the jurisdiction of the court aforesaid, being engaged as a dealer in the necessary as aforesaid, did wilfully and feloniously demand of, and exact and collect from and of one B. Heligman, whose given name is to the grand jurors unknown and can not, therefore, be herein set out, the sum of nineteen dollars and fifty cents ($19.50), as and for the purchase price of one bag of granulated sugar, containing in the aggregate approximately one hundred (100) pounds, then and there purchased by the said B. Heligman from the said L. Cohen Grocery Company, which said purchase price so demanded, exacted, and collected for the said granulated sugar by the said L. Cohen Grocery Company from the said B. Heligman was and constituted an unjust and unreasonable rate and charge as it, the said L. Cohen Grocery Company, then and there well knew.

7 Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

VANCE J. HUGHES,
Special Assistant to the Attorney General.

(Endorsed:) No. 7283. United States District Court. Eastern Division of the Eastern Judicial District of Missouri. The United States *vs.* L. Cohen Grocery Company. Indictment for violation of

act of August 10, 1917, and acts amendatory thereof and supplemental thereto. A true bill. Geo. W. Perry, foreman grand jury. Filed February 27, 1920. W. W. Nall, Clerk. Vance J. Higgs, Special Assistant U. S. Attorney General.

8

(Demurrer to indictment.)

In the District Court of the United States for the Eastern Division, Eastern District of Missouri.

THE UNITED STATES OF AMERICA, PLAINTIFF
vs.
THE L. COHEN GROCER COMPANY, DEFENDANT. } No. 2264.

Now and hereby entering its appearance to the above entitled indictment, the defendant, the L. Cohen Grocer Company demurs to the indictment and each count thereof and says, that they are insufficient in law and that the defendant should not be required to answer to or defend against them for the following reasons:

1. Neither count states facts sufficient to constitute an offense.

2. Neither count sufficiently, or in any manner advises the defendant of the nature and cause of the accusation against the defendant; neither count states facts which will enable to the defendant to properly prepare for trial, or advises the defendant of what it will be required to meet at such trial, and neither count states such facts as, in the event of a conviction or acquittal, will enable the defendant to plead the result in bar to a subsequent indictment for the same offense.

3. Each count of the indictment is violative of the Constitution of the United States, in this to-wit:

9 1. Congress having declared the object of the statute to be the furtherance and success of the military and naval operations of the United States in war against the German Imperial Government, and on October 22, 1919, when the penal clause on which the counts are based was enacted, the necessity for such enactment having passed because of the actual cessation of military and naval operations by the United States in such war, the Congress was without authority or power to enact such penal clause. As enacted, it was and is an invasion of the rights of the States.

2. The section of the amended statute upon which the counts are based violates the sixth amendment to the Constitution, in that it affords a person no standard or criterion by which he can, or could determine whether any act contemplated by him would be violative of the statute; it does not afford a standard, or criterion in connexity to which an indictment based upon the section will, or can advise one, accused under the section, of the nature and cause of the accusation against him; it contains and provides no definition of terms employed so that it can be determined whether an act alleged to have been done is such an act as the section prohibits; it leaves

to the determination of courts and juries what the Congress alone can determine within any lawful limitations, conditions, or circumstances.

Wherefore the defendant prays judgment, that the said indictment and each count thereof, may be for naught held and the defendant be hence discharged.

10

CHESTER H. KRUM,
LOUIS B. SHER,
For said Defendant.

(Endorsed:) Filed in U. S. District Court on March 15, 1920. W. W. Nall, clerk.

United States District Court Eastern Division of the Eastern Judicial District of Missouri.

MONDAY, MARCH 15, 1920.

UNITED STATES OF AMERICA, PLAINTIFF. *vs.* L. COHEN GROCERY COMPANY, DEFENDANT.	No. 7283. Indictment for violation of an act of Congress approved August 10, 1917, and acts amendatory thereto and supplemental thereof.

Now at this day comes the said defendant by attorney, and by leave of court files a demurrer to the indictment in this cause, which demurrer is now submitted to the court upon briefs to be hereafter presented.

11 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, PLAINTIFF. *vs.* L. COHEN GROCER COMPANY, DEFENDANT.	No. 7283.

Memorandum of court on demurrer to indictment.

The defendant, a corporation under the laws of the State of Missouri, stands indicted in this court in two counts under the amendment of October 22, 1919, of the act of August 10, 1917. To this indictment, and to both of the counts thereof, defendant demurs for that both the indictment, which follows the language of the amendment, *supra*, and the amendment itself, are insufficient to inform it of the nature and cause of the accusation against it; and, therefore, that both such indictment and the amendment itself, are violative of the sixth amendment to the Constitution of the United States.

The language of the statute which attempts to create the crime charged against defendant, so far as that language is pertinent to the specific charge against this defendant, reads thus:

12 "That it is hereby made unlawful for any person wilfully * * * to make any unjust or unreasonable rate or charge in handling or dealing in necessaries. * * * Any person violating any of the provisions of this section upon conviction thereof shall be fined not exceeding five thousand dollars and be imprisoned for not more than two years or both." (Sec. 2, Chap. 80, Stat. 1919, amendment of Oct. 22, 1919, to the Lever Act."

Following the language of the above statute the indictment charges that defendant "did wilfully and feloniously make an unjust and unreasonable rate and charge in handling and dealing in a certain necessary, towit, sugar"; and thereupon the indictment proceeds to aver the facts of the alleged sale of sugar, in that it sets forth the date of the purchase, the name of the purchaser to whom said sugar was sold by defendant, the amount of sugar sold, and the price charged such purchaser therefor, and concludes by averring "that said purchase price so demanded, exacted and collected for the said granulated sugar, by the said L. Cohen Grocer Company from the said B. Hebigman, was and constituted an unjust and unreasonable rate and charge, as it, the said L. Cohen Grocer Company then and there well knew."

Shortly before this, in a trial in this court upon a similar indictment against this defendant, at the close of the case, and upon a demurrer *ore tenus* bottomed upon the alleged insufficiency of the evidence to convict, I took occasion in an oral charge to say to the jury this:

"The act under which this prosecution is being had was approved on the 22nd day of October, 1919, more than eleven months
13 after the signing of the armistice. It is, of course, fundamental, gentlemen, that the constitutional validity of this act depends wholly upon whether, at the time it was passed and approved, a state of war existed between the United States of America and the Imperial German Government. Clearly, in a time of peace, a statute like this could not stand under the Constitution of the United States for a single minute.

"The Federal Constitution is not a limitation upon the powers of Congress, but it is a grant of powers to Congress, and beyond the limits of that grant neither Congress nor any other coordinate branch of the Government had a right to go. Congress has no power to do anything unless power to act, either expressly or impliedly, is conferred by the terms of the organic law itself.

"So, in times of peace, the power to pass a statute like this is to be determined by the question whether the statute falls within the domain of interstate commerce, or within the domain of internal revenue. It must be within the domain of one or the other, or Congress has no power to invade the State's rights and pass it. Very

clearly, this statute is not a manifestation of the power of legislation on matters of internal revenue. Just as clearly, in my opinion, or almost as clearly, at least, it is not a matter within the domain of interstate commerce. This is so because this act deals with the commodities that are affected by it after interstate commerce has wholly ceased to deal with these commodities: after, in other words, interstate commerce has acted and the commodity has come to rest in the State—in this case, in the State of Missouri.

"But since the Supreme Court of the United States in the liquor case has seemingly ruled that a legal state of war, or a legal fiction of war, exists and will continue to exist until the ratification of the treaty of peace with the German Republic, and until the proclamation of that fact by the President, although the Imperial German Government with which the war was declared has ceased to be, I am, therefore, bound by this ruling. Consequently, whatever mental reservations I may hold personally, I take it that so far as that particular phase of the Constitution is concerned, that the act in question is valid.

"But, a most serious question is met after the constitutionality of the statute is settled, upon the point of its invasion of State's rights, the point that I have just been talking about. That
14 question is, whether the act is not too vague, indefinite, and uncertain to be enforced by the courts, and whether by reason of such vagueness, indefiniteness, and uncertainty it does not, in effect, delegate the legislative power which is vested in Congress alone to the courts and to the juries of this country; and, also, whether this act by its existing terms fixes any definite or certain rule by which human conduct can be uniformly governed. In other words, the question arises—a serious question arises: Does it inform the accused of the nature and cause of the accusation against him, as the sixth amendment to the Constitution of the United States specifically and certainly requires? I can not be brought to think so, gentlemen.

"Briefly: This statute makes it a felony for any person—which, I take it, includes a corporation as well—wilfully to make any unjust or unreasonable charge in dealing in any necessary. It nowhere defines what is unjust or what shall be deemed unreasonable. It leaves it to the jury to find what particular thing it is that the law has made a felony of. One jury might very well say that a profit or charge of one cent a pound on sugar, above cost and carriage, is unjust and unreasonable, and so a felonious act; while another jury might says that a charge of twenty-five cents was not unjust and unreasonable. No criminal statute, gentlemen, ought to be so vague and uncertain as that the citizen can not at any given moment know whether he is a felon or a patriot.

"In the presence of the existing rapacity and greed of the profiteer, I confess it has been difficult for me to approach this question in a judicial frame of mind. It is to me a matter of most sincere regret that I find it my duty to say, so far as the application of this

law to the fact presented in this identical case is concerned, that it is invalid, for the reason I have stated. It is regrettable that a law which was intended to be as beneficent as this law is intended to be, and which was intended and designed to remedy a most outrageous and crying evil, should be found to fall short by reason of constitutional difficulties of the end sought to be attained. There never was a time when a curb of human greed and rapacity was so urgently demanded as it is demanded now, and I repeat, that the abhorrence I feel of the selfish hoggishness of the profiteer is such that I can scarcely deal with the question with the amount of judicial aplomb with which I ought to deal with it.

15 "But, in my opinion, gentlemen, these considerations do not warrant ruthless over-riding of the rights of the citizen to have stated in a criminal statute the certain and definite rights which hedge him about as a citizen, and the certain and definite definition by which he, or his counsel, can ascertain whether or not he is guilty of a felony.

"Congress alone has power to define crimes against the United States. This power cannot be delegated to the courts or to the juries of this country. * * *

"Therefore, because the law is vague, indefinite, and uncertain, and because it fixes no immutable standard of gilt, but leaves such standard to the variant views of the different courts and juries which may be called on to enforce it, and because it does not inform defendant of the nature and cause of the accusation against him, I think it is constitutionally invalid, and that the demurrer offered by the defendant ought to be sustained."

To these views thus orally expressed I am constrained to adhere, notwithstanding the fact that my attention has been called to certain cases which, it is urged, give color to the contention that statutes equally as vague, uncertain, and indefinite as that here involved have nevertheless been upheld by the Supreme Court of the United States as constitutionally valid. These cases are Standard Oil Company vs. United States, 221 U. S., 106; Nash vs. U. S., 229 U. S., 273; and Waters-Pierce Oil Company vs. Texas, 212 U. S., 86.

The case of Standard Oil Co. vs. United States, *supra*, was a civil proceeding by injunction and for dissolution into its constituent elements for monopolization and restraint of trade, and it was not a criminal proceeding, such as is this at bar. The statute upheld in the Standard Oil case upon an attack analogous to this (or

16 so far analogous as a civil case may be to a criminal one) were sections 1 and 2 of the so-called Sherman Anti-Trust Act. (Sections 1 and 2, act of July 2, 1890, chap. 647, 26 Stat., 209.) These sections denounced and declared unlawful all monopolies and combinations and conspiracies in restraint of trade. Aiding the view taken in the above case by the Supreme Court of the United States, reliance to a large extent was had upon the ancient common law definitions and crimes of engrossing and monopolizing. Since the above case was not a criminal one but a civil action, no occa-

sion arose therein for any reference to or consideration by either court of counsel of the provisions of the sixth amendment to the Federal Constitution, and none such was made.

Neither was the case of Waters-Pierce Oil Company vs. Texas, *supra*, a criminal case but a civil case in the nature of *quo warranto*. The trial thereof in the Texas State courts was had under certain statutes of that State, which provided as punishment for the violation thereof ouster and the assessment of certain penalties. Not the sixth amendment but that phrase of the fourteenth amendment touching due process of law was alone involved. (Waters-Pierce Oil Co. vs. Texas, *supra*, l. c. 111.) While the attack involved the alleged vagueness and indefiniteness of the Texas Statutes, these statutes clearly defined a monopoly. (Waters-Pierce Oil Co. vs. Texas, *supra*, l. c. 99.) For the rest, what is said touching the Standard Oil case, *supra*, applies also to the Waters-Pierce case.

17 The case of Nash vs. United States, supra, was, however, a criminal case under sections 1 and 2, supra, of the Sherman Antitrust Act. The indictment in the Nash case was in two counts, one of which charged a conspiracy in restraint of trade, and the other a conspiracy to monopolize. It may or may not be a suggestive feature that there was originally also a third count which charged Nash with monopolization. This count was held to be bad on demurrer below and thereafter fell out of the case.

In the course of the opinion in the Nash case it was pointed out that no overt act, nothing, indeed, beyond the bare conspiracy itself, need be either charged or proven: that the Sherman Antitrust Act punishes the conspiracies at which it is leveled on the common-law footing, and therefore does not make the doing of any act other than the act of conspiracy itself a condition of liability. Thus the Supreme Court justified the statutory crimes and conspiracies to monopolize, and conspiracies in restraint of trade, which are denounced by the Sherman Act by a relegation for their constituent elements back to the common-law definitions of the crimes of engrossing, monopolies and contracts in restraint of trade. (3 Coke Inst. 181, chap. 85; 1 Hawkins P. C., chap. 29; 5 and 6 Edw. VI, chap. 14; Standard Oil Co. vs. United States, 221 U. S., l. c. 51.) Just here the query may logically arise as to where at common law is there any crime defined or denounced as "making an unjust or unreasonable charge in dealing in any necessary"?

18 After the Nash case was ruled, the Supreme Court of the United States again had occasion to refer to it and distinguish it in a case arising under the constitution and laws of the State of Kentucky. (International Harvester Co. vs. Kentucky, 234 U. S., 216.) Plaintiff in error in the above case was convicted and fined in the courts of the State of Kentucky under certain statutes passed pursuant to provisions of the Kentucky constitution, which permitted the legislature to enact such laws as might be necessary to prevent all trusts "from combining to depreciate below its real

value any article, or to enhance the cost of any article above its real value." The statutes passed by the Legislature of Kentucky made it lawful to enter into any combination for the purpose of controlling prices, "unless for the purpose or with the effect of fixing a price that was greater or less than the real value of the article." The Supreme Court of the United States held that neither the constitution of Kentucky nor the statutes above referred to, and passed pursuant to the constitution, offered any standard of conduct that it is possible to know in advance and comply with, and that such provisions, as a consequence, were invalid. (International Harvester Co. vs. Kentucky, 234 U. S., 223.)

Distinguishing the Nash case from what was said in the International Harvester case, the Supreme Court said:

"We regard this decision as consistent with Nash v. United States (229 U. S., 373, 377), in which it was held that a criminal law is not unconstitutional merely because it throws upon men the risk of rightly estimating a matter of degree—what is an undue restraint of trade. That deals with the actual, not the imaginary, condition other than the facts. It goes no further than to recognize that, as with negligence, between the two extremes of the obviously illegal and the plainly lawful there is a gradual approach, and that the complexity of life makes it impossible to draw a line in advance without an artificial simplification that would be unjust. The conditions are as permanent as anything human, and a great body of precedents on the civil side coupled with familiar practice make it comparatively easy for common sense to keep to what is safe. But if business is to go on, men must unite to do it and must sell their wares. To compel them to guess on peril of indictment what the community would have given for them if the continually changing conditions were other than they are, to an uncertain extent; to divine prophetically what the reaction of only partially determinate facts would be upon the imaginations and desires of purchasers, is to exact gifts that mankind does not possess." (234 U. S., 223.)

While no reference was made by the Supreme Court in the above excerpt to the fact that common law crimes (which form the very foundation stones of the offenses denounced in the Sherman Anti-trust Act) were being dealt with in the Nash case, it is yet clearly obvious that the distinguishing features, as between the two classes of cases, brings this case into that class represented by the Kentucky Statutes, rather than the common-law class represented by the Nash case. Indeed, upon principle, I am unable to distinguish the instant case from the Kentucky case. No man would engage in business, and no self-respecting man would remain in business, if his fortune, good name, or liberty is to be determined solely by the heated and prejudiced views of what is unjust and unreasonable which may be entertained by a jury personally embarassed and harrassed, it may be, by the inordinate rise in prices of all commodities. Such a law may be fit for the trial of the guilty; but laws ought to

20 be fit both to try the guilty and the innocent. A law which is fit only to try those who are guilty necessarily begs the question of guilt, and is, therefore, no better than lynch law.

The definitions, boundaries, and limits of a criminal statute ought, at least, to be so clear that no man in his right mind can be in doubt when he is violating and when he is not violating such statute. There ought not to be necessary any chopping of logic or intricate reasoning from cause to effect in order to decide the question of criminality.

If this law is to stand, then no longer would there seem need of defining crimes by separate statutes. All that will be necessary will be to pass a single sweeping statute, declaring that any person who shall commit any unjust or unreasonable act, or any wrongful or criminal act, shall be deemed guilty of a felony; and leave it to the jury to determine what is unjust, or unreasonable, wrongful, or criminal.

Neither is justification for the indefiniteness and uncertainty which inhere in the statute under discussion to be found in any alleged necessity to mitigate a present and crying evil which all right-thinking men must deprecate and abhor; for it would seem that it might simply have been declared that a sale of any necessary for a stated percentage increase in price, beyond cost and carriage, should be a punishable crime. At least, such a law would not be objectionable on the ground here urged. That it would have been arbitrary may be conceded. But the statute here is just as arbitrary, and to
21 its arbitrariness is added an indefiniteness, vagueness, and uncertainty, which is dangerous, beyond excusing, to the property and liberty of innocent men.

For these reasons, and for others which I might add if leisure allowed, I think the demurrer to the indictment ought to be sustained.

(Signed) C. B. FARIS,
District Judge.

(Endorsed): Filed in U. S. District Court on April 8, 1920. W. W. Nall, Clerk.

22 United States District Court, Eastern Division of the Eastern Judicial District of Missouri.

THURSDAY, APRIL 8, 1920.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
L. COHEN GROCERY COMPANY, A CORPORATION, DEFENDANT.

No. 7283. Indictment for violation of an act of Congress approved August 10th, 1917, and acts amendatory thereof and supplemental thereto.

The court having fully considered the demurrer of defendant to the indictment in this cause, doth

Order that the said demurrer be and the same is hereby sustained, to which ruling the said plaintiff excepts. Memorandum of opinion filed.

23 In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
L. COHEN GROCERY COMPANY, DEFENDANT. } No. 7283.

Petition for Writ of Error.

Now on this the 8th day of April, A. D. 1920, comes the above named plaintiff, United States of America, by Vance J. Higgs, Special Assistant to the Attorney General of the United States of America, its attorney, and complains that in the record and proceedings had in said cause, and also in the rendition of the decision and judgment in the above-entitled cause in said United States District Court for the Eastern Division of the Eastern District of Missouri, at the March term thereof, against said plaintiff, on the day of April, A. D. 1920, manifest error occurred to the great damage of said plaintiff in the decision and judgment of said District Court of the United States, in sustaining the demurrer to the indictment therein, which said decision and judgment is based upon the construction of the statute upon which said indictment, and each count thereof, is founded, to-wit, section 4 of the act of Congress approved August 10, 1917, as amended by the act of October 22,
24 1919, which said amendatory act of October 22, 1919, is entitled "An act to amend an act entitled 'An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel' approved August 10, 1917, and to regulate rents in the District of Columbia."

Wherefore, this plaintiff, in accordance with the provisions of the act of March 2, 1907 (section 1704, United States Compiled Statutes 1916), prays for the allowance of a writ of error in said cause, and for such other orders and process as may cause the errors here complained of to be corrected, and the decision and judgment in said proceedings to be reversed by the Supreme Court of the United States of America.

VANCE J. HIGGS,
Special Assistant to the Attorney General, of the United States of America, Attorney for Plaintiff.

(Endorsed:) Filed in U. S. District Court on April 8, 1920, W. W. Nall, clerk.

25 **In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.**

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
L. COHEN GROCERY COMPANY, DEFENDANT. } No. 7283.

Assignment of errors.

Now on this the 8th day of April, A. D. 1920, comes the United States of America, plaintiff herein, by Vance J. Higgs, special assistant to the Attorney General of the United States of America, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First, that the court erred to the injury of the United States of America in sustaining the demurrer filed by defendant to the indictment, and to each count thereof, in this cause, on the ground that that portion of section 4 of the act of Congress approved August 10, 1917, as amended by the act of Congress approved October 22, 1919, entitled "An act to amend an act entitled 'An act to provide further for the national security and defense by encouraging the production, conserving the supply, and controlling the distribution of food products and fuel,' approved August 10, 1917, and to regulate rents in the District of Columbia," upon which said indictment is predi-
26 cated, is unconstitutional and invalid, and by entering a judgment discharging defendant herein from all criminal liability under said section of said act:

Second, that the court erred to the injury of the United States of America in its construction of said section of said act by its decision and judgment in sustaining said demurrer to the indictment in this cause:

Third, that the court erred to the injury of the United States of America in sustaining, and not overruling, said demurrer to the indictment in this cause:

Fourth, that the court erred to the injury of the United States of America in deciding said demurrer to the indictment against the plaintiff and in favor of the defendant:

Wherefore the United States of America prays that said decision and judgment of said District Court of the United States for the Eastern Division of the Eastern District of Missouri may be reversed, annulled, and held for naught, and that the said United States of America may be restored to all things which it has lost, occasioned by said decision and judgment.

VANCE J. HIGGS,
Special Assistant to the Attorney General of the United States of America, Attorney for Plaintiff.

(Endorsed:) Filed in U. S. District Court on April 8, 1920. W. W. Nall, Clerk.

27 In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
L. COHEN GROCERY COMPANY, DEFENDANT. } No. 7283.

Order allowing writ of error.

Upon motion of Vance J. Higgs, special assistant to the Attorney General of the United States, attorney for plaintiff herein, and on filing its petition for an order allowing writ of error, together with an assignment of errors, it is

Ordered, that a writ of error be allowed to the Supreme Court of the United States of America from the decision and judgment, entered April 8th, A. D. 1920, sustaining the demurrer filed by defendant herein to the indictment, and each count thereof, in the above-entitled cause, and that a certified transcript of the record and proceedings herein be forthwith transmitted to the said Supreme Court of the United States.

This the 8th day of April, A. D. 1920.

C. B. FARIS,
Judge, United States District Court, Eastern District of Missouri.

(Endorsed:) Filed in U. S. District Court on April 8, 1920, W. W. Nall, Clerk.

28 In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
L. COHEN GROCERY COMPANY, DEFENDANT. } No. 7283.

Election to take typewritten transcript, and praecipe therefor.

To the Honorable W. W. NALL,
Clerk of the United States District Court for the Eastern District of Missouri.

You are hereby notified that, a writ of error having heretofore been allowed in this cause to the Supreme Court of the United States, the plaintiff herein, the United States of America, elects to take a typewritten, instead of a printed, transcript of all the proceedings had in this cause, same to include the indictment, the demurrer to the indictment, the petition for writ of error, the order allowing the writ of error, the writ of error together with your return thereon, as clerk of the United States District Court, the assignment of errors of the United States of America, and the citation together with the

acceptance of service endorsed thereon by Chester H. Krum and Louis B. Sher, attorneys for defendant, said L. Cohn Grocery Company, same to be certified to the clerk of the Supreme Court,
29 and to be incorporated in the transcript to be printed under the supervision of said clerk of the Supreme Court of the United States.

NANCE J. HUGH,
Special Assistant to the Attorney General of the United States of America, Attorney for Plaintiff.

Enclosed: Filed in U. S. District Court, on April 8, 1920, W. W. Nall, clerk.

30. **(Clerk's Certificate to Transcript.)**

UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the District Court of the United States within and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings, in cause No. 7283 of United States of America, Plaintiff, vs. L. Cohen Grocery Company, prepared in accordance with the praecipe of counsel for Plaintiff, as fully as the same remains on file and of record in said cause in my office; and that the original citation and writ of error are hereto attached and herewith returned.

In witness whereof, I hereunto subscribe my hand and affix the seal of said District Court at office in the city of St. Louis, in said division and district this 13th day of April, A. D. 1920.

[SEAL.] W. W. NALL,
Clerk of said District Court.
By EUGENE C. FISHER,
Deputy Clerk.

(Endorsed:) File No. 27,661. E. Missouri, D. C. U. S. Term No. 906. The United States of America, Plaintiff in Error, vs. L. Cohen Grocery Company. Filed May 6th, 1920. File No. 27,661.